

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

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|---------------------------|---|--------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 3:06-CR-136 |
| |) | (PHILLIPS/SHIRLEY) |
| DWIGHT BRIGHT, |) | |
| ROBERT HICKMAN, |) | |
| PAULINE JOHNSON, |) | |
| TIMOTHY LOVEDAY, |) | |
| CHRISTOPHER FORESTER, |) | |
| JAMES O'DELL, and |) | |
| ROGER MILLS |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the district court as may be appropriate. This cause came before the undersigned on November 22, 2006, for a scheduled motion hearing. Assistant United States Attorney Brownlow Marsh was present representing the government. Attorney Jonathan Wood was present for James O'Dell; Attorney Aubrey Davis was present for Pauline Johnson; Attorney Chris Oldham was present for Robert Hickman; Attorney Charles Webber was present for Christopher Forester; Attorney Michael McGovern was present for Roger Mills; and Attorney Stephen Burroughs was present for Dwight Bright. Defendants O'Dell, Hickman, Forester, Mills and Bright were present at the hearing.

Counsel McGovern for Defendant Mills made an oral motion to continue the impending December 13, 2006 trial, in light of his recent appointment and representation of Defendant Mills, only recent receipt of discovery and need to review same, in order that he might assess the need to file motions, pursue and gain a ruling on pending motions, as well as have time to locate witnesses, review discovery, and prepare for trial. The government stated that it did not object to Defendants' requested continuance of the trial. Each defendant by and through counsel also agreed with Defendant Mills request for a continuance, though same had additional reasons that such was in their clients best interest. All Defendant concurred.

The Court finds Defendants' oral motion to continue the trial to be well taken and for the reasons stated herein finds that the ends of justice served by granting the oral motion outweigh the best interest of the public and Defendants in a speedy trial. 18 U.S.C. § 3161(h)(8)(A). The Court finds that the failure to grant a continuance would deprive the parties of adequate time for the defendants and their attorneys to obtain and review the governments discovery, conduct and review the investigation proffered as needed and assess the need for and filing of motions as well as the Court to hear evidence and argument on the pending motions in this case. See 18 U.S.C. § 3161(h)(1)(J). The Court finds that this process could not be accomplished before the December 13, 2006 court date or in less than approximately four and one half (4.5) months. The Court finds that if the continuance were not granted a miscarriage of justice would occur. 18 U.S.C. 3161(h)(8)(B)(i). Accordingly, the Court **GRANTS** Defendants' oral motion to continue the trial.

In light of these findings and its granting of the oral motion, the Court set a new trial date of **April 2, 2007**. The Court further finds, and the parties agreed, that all the time between the **November 22, 2006** hearing and the new trial date of **April 2, 2007**, is fully excludable time under

18 U.S.C. § 3161(h)(1)(J), -(h)(8)(A)-(B). Regarding further scheduling, the motion-filing deadline is extended to **January 5, 2007**. Responses are due on or before **January 19, 2007**. Reciprocal discovery is due on **January 19, 2007, at 9:30 a.m.** The parties are to appear before the undersigned for a pretrial conference/motion hearing on **February 9, 2007, at 9:30 a.m.**

Accordingly, it is **ORDERED**:

- (1) Defendants' oral motion to continue the trial is **GRANTED**;
- (2) The trial of this matter is reset to commence on **April 2, 2007, at 9:00 a.m.**, before the Honorable Thomas Phillips, United States District Judge;
- (3) All time between the **November 22, 2006** hearing and the new trial date of **April 2, 2007**, is fully excludable time under the Speedy Trial Act for the reasons set forth above;
- (4) A new motion deadline is set for **January 5, 2007**;
- (5) Responses are due on **January 19, 2007**;
- (6) Reciprocal discovery is due on **January 19, 2007 at 9:30 a.m.**; and
- (7) The parties are to appear before the undersigned for a pretrial conference/motion hearing on **February 9, 2007, at 9:30 a.m.**

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge